

Summation - People

1 (Whereupon, court stood in recess while the  
2 Court deliberated.)

3 THE CLERK: Case on trial, the People of the  
4 State of New York against John Kogut, Indictment 61029  
5 of 1985.

6 Both sides ready?

7 MR. CASTELEIRO: Ready.

8 MR. BIANCAVILLA: Ready.

9 THE COURT: The Court will deliver its  
10 verdict as follows:

11 I have reviewed the evidence in this case.  
12 I have, of course, listened to the evidence for the  
13 last few months. I reiterate the great respect that I  
14 have for both of the attorneys and appreciate the fact  
15 you have been so courteous throughout the trial.

16 In analyzing the case, I felt the best way  
17 to deal with it would be from the bottom up, so to  
18 speak.

19 I reached my decision, first, with respect  
20 to count three, and it is the finding of this Court  
21 that I do not believe that the question hairs were  
22 left in the van on or about November 10th of 1984, and  
23 absent those hairs, there is no corroboration,  
24 whatsoever, for the defendant's confession concerning  
25 the count of rape.

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1                   That fact, plus the lack of any physical  
2                   injury, the unknown semen that was in poor Theresa  
3                   Fusco, and the other evidence concerning the fact of a  
4                   possible consensual sexual liaison by Theresa Fusco,  
5                   leads this Court to the conclusion that the defendant  
6                   is not guilty of count three of this indictment.

7                   Count two of the indictment charges the  
8                   defendant with murder in the course and furtherance of  
9                   the crime of rape in the first degree.

10                  The rape having not been established, the  
11                  Court, obviously, finds the defendant not guilty of  
12                  count two.

13                  That brings us to count one which is the  
14                  intentional murder count, and, the Court having found  
15                  that there is no rape, then the issue comes up as to  
16                  why then kill Theresa Fusco.

17                  Motive, of course, is not an element of the  
18                  crime of murder, and in the case -- and the proof in  
19                  this case then comes down to one thing, and one thing  
20                  only, and that is the confession of Mr. Kogut.

21                  In order for a trier of fact to accept and  
22                  apply a defendant's confession, it must be found  
23                  beyond a reasonable doubt that the confession is not  
24                  only voluntary but truthful as well.

25                  I believe that the scientific evidence in

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1       this case proves that too many material facts set  
2       forth in the defendant's confession are clearly not  
3       truthful.

That is the verdict of this Court.

Again, I thank both of you.

COURT OFFICER: Remain seated.

10 || \* \* \*

Certified to be a true and  
accurate transcript.

Buff Branson  
BUFF BRANSON, RPR  
Senior Court Reporter

**BUFF BRANSON, RPR**  
**Senior Court Reporter**

## **Senior Court Reporter**

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